

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹
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PROMESA

Title III

No. 17 BK 3283-LTS

Re: ECF No. 4071

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO

Debtor.
-----X

PROMESA

Title III

No. 17 BK 3283-LTS

**This Motion relates only to the
Commonwealth and shall only
be filed in the lead Case No. 17
BK 3283-LTS.**

**UNOPPOSED MOTION OF COMMONWEALTH OF PUERTO RICO
FOR LEAVE TO FILE SUR-REPLY TO MOVANTS'
REPLY TO OBJECTION OF THE COMMONWEALTH TO MOTION
FOR RELIEF FROM AUTOMATIC STAY FILED BY AMPR AND AMPR-LS**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Commonwealth of Puerto Rico (the “Commonwealth”) respectfully submits this motion, pursuant to Section III.L of the *Seventh Amended Notice, Case Management and*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Administrative Procedures [ECF No. 4086-1] (the “Case Management Procedures”), for leave for file a sur-reply to the *Movants’ Reply to Objection of the Commonwealth to Motion for Relief from Automatic Stay Filed by AMPR and AMPR-LS* [ECF No. 4071] (the “Reply”) filed by Asociación de Maestros de Puerto Rico (“AMPR”), and its Union, Asociación de Maestros de Puerto Rico-Local Sindical (“AMPR-LS” and together with AMPR, “Movants”).² In support of its motion for leave, the Commonwealth respectfully represents as follows:³

PRELIMINARY STATEMENT

1. The Commonwealth seeks leave to file its sur-reply to address an argument first raised in the Reply: the contention that “the Government Parties expressly excluded Movants’ claims from the Bar Date Order [ECF No. 2521] and thus, excluded the Lawsuit indirectly or directly, from the application of the Title III automatic stay and the claims resolution process of the Commonwealth Title III case.” Reply ¶ 1. The Commonwealth’s proposed sur-reply, attached hereto as **Exhibit 1** (the “Sur-Reply”), addresses the new argument raised in the Reply.

2. The Commonwealth has not had the opportunity to respond to this new argument and certain misinterpretations of the *Order (A) Establishing Deadlines and Procedures for Filing Proofs of Claim and (B) Approving Form and Manner of Notice Thereof* [ECF No. 2521] (the “Bar Date Order”). The Commonwealth requests that the Court grant this motion and give it leave to file the Sur-Reply.

² The Financial Oversight and Management Board for Puerto Rico, as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), has authorized the Department of Justice to file this Motion on behalf of the Commonwealth.

³ Capitalized terms not otherwise defined herein shall have the same meanings given to them in the *Objection of the Commonwealth to Motion for Relief from Automatic Stay Filed By Asociación de Maestros de Puerto Rico, and Its Union, Asociación de Maestros de Puerto Rico-Local Sindical* [ECF No. 4038].

BACKGROUND

3. On September 10, 2018, Movants filed the Motion seeking to lift the automatic stay to proceed with the Lawsuit against the Commonwealth, the Department of Education, and the Secretary of Education, and for Movants to enforce any judgment entered in the Lawsuit. The Motion did not challenge the applicability of the automatic stay based on the purported exclusion of Movants' claims from the proof of claim filing requirements of the Bar Date Order.

4. On October 10, 2018, the Commonwealth filed the *Objection of the Commonwealth to Motion for Relief from Automatic Stay Filed By Asociación de Maestros de Puerto Rico, and Its Union, Asociación de Maestros de Puerto Rico-Local Sindical* [ECF No. 4038] (the "Objection").

5. On October 19, 2018, Movants filed the Reply, which raised for the first time the argument that "the Government Parties expressly excluded Movants' claims from the Bar Date Order [ECF No. 2521] and thus, excluded the Lawsuit indirectly or directly, from the application of the Title III automatic stay and the claims resolution process of the Commonwealth Title III case." Reply ¶ 1. On the same day, Movants also filed the *Notice of Hearing on AMPR and AMPR-LS Reply to Objection of the Commonwealth to Motion for Relief from Automatic Stay Filed by AMPR and AMPR-LS* [ECF NO. 4077], requesting a hearing on the Motion at the omnibus hearing scheduled on November 7, 2018.

6. The Commonwealth conferred with Movants' counsel to request their consent to the filing of the Commonwealth's Sur-Reply. Movants' counsel does not object to the Commonwealth's filing of the Sur-Reply.

ARGUMENT

7. Under Section III.L. of the Case Management Procedures, sur-replies must be authorized by the Court. The Court can and should permit the Commonwealth to file a sur-reply

to address Movants' new argument regarding the Bar Date Order. *See Atlanta Fiberglass USA, LLC v. KPI, Co.*, 911 F. Supp. 2d 1247, 1262 (N.D. Ga. 2012) ("surreplies typically will be permitted only in unusual circumstances, such as where a movant raises new arguments or facts in a reply brief . . ."); *Hammett v. Am. Bankers Ins. Co.*, 203 F.R.D. 690, 695 (S.D. Fla. 2001) ("Because Plaintiff presented new arguments and a new theory for certification in her Reply the Court will grant Defendants' Motion for Leave to File a Sur-Reply and Plaintiff's Motion for Leave to File a Response to Defendants' Sur-Reply.").

8. The Commonwealth has not had the opportunity to address Movants' Bar Date Order argument. As noted above, the argument did not arise until after the Commonwealth filed its Objection. The Commonwealth did not address this argument in its Objection because the Bar Date Order has no relation to the scope and applicability of the automatic stay. Furthermore, it is necessary for the Commonwealth to address certain misinterpretations of the Bar Date Order contained in the Reply, as well as the undisputed fact that the Movants filed a proof of claim asserting these claims on behalf of the affected individuals.

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WHEREFORE, the Commonwealth respectfully requests that the Court authorize the Commonwealth to file the attached Sur-Reply.

Dated: October 26, 2018
San Juan, Puerto Rico

Respectfully submitted,

WANDA VÁZQUEZ GARCED
Secretary of Justice

/s/ Wandymar Burgos Vargas

WANDYMAR BURGOS VARGAS

USDC 223502

Deputy Secretary in Litigation

Department of Justice

P.O. Box 9020192

San Juan, Puerto Rico 00902-0192

Phone: 787-721-2940 Ext. 2500, 2501

wburgos@justicia.pr.gov

Attorneys for the Commonwealth of Puerto Rico